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Tuesday, 29 June 2004, 3 p.m.
New York

President:	Mr. Baja	(Philippines)
Members:	Algeria	Mr. Djeffal
	Angola	Mr. Lucas
	Benin	Mr. Zinsou
	Brazil	Mr. Baumbach
	Chile	Mr. Donoso
	China	Mr. Guan Jian
	France	Mr. Florent
	Germany	Mr. Much
	Pakistan	Mr. Khalid
	Romania	Mr. Onisii
	Russian Federation	Mr. Kuzmenkov
	Spain	Mr. De Palacio España
	United Kingdom of Great Britain and Northern Ireland	Mr. Watson
	United States of America	Mr. Jones

Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Letter dated 21 May 2004 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 addressed to the President of the Security Council (S/2004/420)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room C-154A.

04-40796 (E)

Letter dated 30 April 2004 from the President of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 addressed to the President of the Security Council (S/2004/341)

The meeting was resumed at 3.15 p.m.

Expression of sympathy in connection with the helicopter crash in Sierra Leone

The President: Members of the Security Council have learned with deep distress of the crash of a helicopter of the United Nations Mission in Sierra Leone (UNAMSIL) earlier today. It carried more than 20 United Nations and non-United Nations personnel. On behalf of the Council, I should like to express profound sympathy and condolences to the bereaved families and to the Governments of the victims of this grave incident. They gave their lives in the cause of peace while serving with UNAMSIL. The international community is deeply saddened by this tragic loss.

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

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Mr. Zinsou (Benin) (*spoke in French*): I should like to join my delegation's voice with yours, Mr. President, in expressing our condolences and sympathies to the families of the victims of the accident that just took place in Sierra Leone.

Permit me to thank the Presidents and Prosecutors of both International Tribunals for the exhaustive reports they just presented to us. We have been able to appreciate the important contributions they are making to the fight against impunity for war crimes, genocide and crimes against humanity.

Ten years after the genocide in Rwanda and five years after the end of the war in the Balkans, the Security Council can welcome the efforts that have been made. Those efforts are the best way to prevent the repetition of or discourage behaviour that might promote such crimes. We also share the international community's concern to ensure that both Tribunals resolutely carry out the completion strategy for their work within a specific time frame. The Council, in resolution 1534 (2004), provided clear guidelines for the assessments required in that regard.

We commend the Tribunals for presenting convincingly to us the prospects for their future work within the context of trying cases falling under international legal jurisdiction, for providing us with an assessment and for giving us a better idea of the constraints involved in transferring to national jurisdictions cases that, by their nature, might fall under their purview. Thanks to that rigorous assessment effort, we have a rather clear view of the advantages that might result from implementation of the completion strategy and of the bottlenecks that we face if the appropriate measures advocated by the Tribunals are not diligently taken.

In that context, my delegation would like to focus on two points: the factors influencing the strategy's implementation and the factors bearing on the Tribunals' capacity to try their cases on time.

On the first point, we share the concerns expressed by the Tribunals on the recruitment freeze and on the impossibility of their maintaining qualified staff. We must also find a solution to the problem of the salary freeze in the Investigation Section so as not to further hinder the continuation of proceedings.

We acknowledge that these factors are a serious handicap to the functioning of the Tribunals. We fully

agree with the Secretary-General's view on this question. The essentially financial bases of the situation must be taken into account by the Security Council. We propose that it appeal urgently to Member States to show their commitment to the campaign against impunity by providing the resources necessary to combating it.

With respect to the ability to bring cases to trial according to schedule, we have complete trust that the judges will adopt strategies of their choice in order to accelerate the trial process. We know, however, that the quest for speed must not compromise the principles of equitable international justice. Moreover, we believe that it is necessary to reconcile the mandates of the judges with the length of the trials, of course in the interest of the defendants. Furthermore, the cooperation of Member States concerned is crucial in making defendants available to the Tribunals, because only in that way can we prevent those who are responsible for serious crimes from evading international justice.

As to the decision to refer lower-rank accused to national jurisdictions, we believe that special attention should be given to strengthening the capacities of the judicial systems of those countries so as to ensure that those who are transferred enjoy impartial justice in accordance with international norms. In that regard, we support the proposal made by the Tribunals that the possibility be considered of entrusting trials to countries that have operational judicial systems. Furthermore, in the cases of collective crimes, such as those in Rwanda, the principle of individual responsibility should be weighed against the promotion of national reconciliation. The case of genocide in Rwanda is extremely complex and serious, and should be addressed with circumspection because, when a crime is committed on such a large scale, the evil is no longer individual and becomes societal. Any solution must seek to help the societies concerned to reconcile themselves with themselves.

While impunity is intolerable at any level, be it in Rwanda or the countries of the former Yugoslavia, the Tribunals should remain aware of the cultural sensitivities of the populations of those countries and bear in mind that the principal task is to maintain peace and to create harmony among the various ethnic groups that are called on to live together. That is why pardons and truth and reconciliation commissions should be considered wherever possible.

In conclusion, I reiterate Benin's support for the two Tribunals, because the establishment of a lasting peace in those countries, through their own actions, will depend to a certain extent on the clear-sightedness, rigor and flexibility with which they undertake their mission.

Mr. Guan Jian (China) (*spoke in Chinese*): At the outset, allow me, like the speaker before me, to express my condolences over the tragedy of United Nations and other personnel killed in the crash in Sierra Leone.

We have listened with great interest to the briefings of Presidents Meron and Møse and Prosecutors Del Ponte and Jallow on the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). We thank them for the work of the Tribunals. We appreciate the positive measures adopted by the Tribunals to implement the completion strategy. We believe that they are rightly focused on the prosecution and trial of the senior accused. Furthermore, the measures taken by the Tribunals to encourage suspects to turn themselves in and to plead guilty are also effective means of accelerating the trial process.

We believe that the two priorities in the work of the Tribunals are to transfer cases to the domestic courts of the countries concerned as soon as possible and to ensure the continuity of the trial process. We note the fact that the War Crimes Chamber of Bosnia and Herzegovina is expected to be operational in 2005. We hope that the countries of the former Yugoslavia and those under the jurisdiction of the Rwandan Tribunal will be able to assume responsibility for the trials of the relevant cases. The two Tribunals and interested countries should provide those that have agreed to take those cases with the legal, technical, financial and personnel support so as to enhance their legal capacities and allow them to attain the standards of a fair trial as soon as possible. After the two Tribunals have confirmed that appropriate conditions exist, the cases of intermediate- and lower-rank accused should be handed over to the domestic courts of those countries for trial.

We believe that the current situation shows that the smooth implementation of the completion strategy requires cooperation between the countries of the regions involved. The Security Council, the countries

concerned and the two Tribunals can also play a role in exploring how to establish domestic courts and to ensure the continuity of the Tribunals' work. We believe that certain technical issues must be addressed, but we maintain that appropriate measures should be taken to permit experienced judges to concentrate on completing the trials. We are open to any proposal that will contribute to the continuity of the work of the two Tribunals.

Mr. Lucas (Angola): I join previous speakers in expressing the condolences of my delegation to the United Nations and to the families of the victims of today's accident in Sierra Leone.

My delegation welcomes and thanks the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for their reports on the work of the Tribunals and on the implementation of the completion strategy set out in resolution 1503 (2003). We view the work of the Tribunals as an important contribution to addressing the challenges of justice by ending impunity, to the process of healing the bitter divisions of the past, to the strengthening of national reconciliation and to the restoration of peace and security in the Balkans and in the Great Lakes region.

We are pleased that the two Tribunals are now fully operational, providing fair and impartial trials to the indicted and rendering justice to the victims and protection to the witnesses. Notwithstanding the efforts and progress accomplished, the time frame set for the completion of trials seems to be difficult to meet unless further measures are taken. In this regard, we consider international cooperation to be a vital element for the successful conduct of the Tribunals' work with respect to the execution of the arrest warrants, provisional detention and the transfer of suspects and accused persons to the Tribunals' seats.

We stress the importance of the provisions of resolution 1503 (2003) relating to the cooperation to be extended to the ICTY and the ICTR by the States in their respective regions. This is an important factor in the investigation process in bringing to the dock all indictees still at large and for the full implementation of the completion strategy.

As far as Angola is concerned, the case of General Agustin Bizimungo, former Chief of Staff of the Rwandan Army, arrested in Angola and transferred to the custody of the International Criminal Tribunal for Rwanda, demonstrates how Angola is committed to the implementation of relevant Security Council resolutions, especially those related to the required international cooperation with the Tribunals.

The transfer of cases to national jurisdictions for trial is also a critical element to the success of the completion strategy, as the Security Council noted in its resolution 1503 (2003). We are encouraged by the arrangements for the transfer of cases from the ICTY and the ICTR to national courts.

Specifically regarding ICTR, we are encouraged by the progress achieved by the Tribunal over the past few years, as illustrated by the 15 condemnations involving 21 accused, rendered since the start of trials in 1997. In that regard, we stress the importance of resolution 1512 (2003). The reinforcement of the Tribunal's capacity with the increase in the number of ad litem judges, which, coupled with the appointment of its own Prosecutor and the establishment of an independent appeals unit, facilitates the efforts of the Tribunal to meet its targets set by the Security Council for the completion of trials. Nevertheless, if the completion strategy is to achieve its purpose, we think that the international community has a collective responsibility to ensure that the ICTR receives all the required financial and administrative resources in order to successfully fulfil its mandate.

To conclude, we hope that the completion strategy of the ICTR will continue to focus on its overall purpose of contributing to peace and stability in the region. Therefore, we stress the importance of allocating enough resources for activities that will complement long-term reconciliation efforts undertaken by the Government of Rwanda. It is our belief that the international community will continue assisting the people of Rwanda by rendering justice and fighting impunity to overcome the bitter legacy of genocide.

Mr. Khalid (Pakistan): We also join the other delegations in conveying our deepest condolences to all the bereaved families over the tragic loss of human life in the helicopter crash in Sierra Leone. We understand that on board were also Pakistani peacekeepers, who died in the accident, and we thank the Council members who have expressed their grief and sorrow over this tragic loss, and we will be conveying those sentiments to Islamabad.

We would like to thank the Presidents of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), as well as their two Prosecutors, for their comprehensive and very useful presentations today.

Pakistan attaches great importance to the role played by international tribunals set up by the United Nations to prosecute crimes against humanity under the genocide conventions and international humanitarian law. The cornerstone of our policy is to promote respect for and compliance with international law. We support all efforts aimed at increasing the efficiency of the ICTY and the ICTR. We hope that these efforts will help in the fulfilment of the completion strategy of these two Tribunals.

We appreciate the efforts of the two Tribunals in pursuance of the completion strategy, as reiterated in resolution 1534 (2004). We have taken note of the difficulties the two Tribunals are currently facing and how that might affect their completion strategy. Pakistan stands ready to contribute to the efforts of the two Tribunals to fulfil their completion strategies. We also believe that there is a need for all States to cooperate fully with the two Tribunals.

We are heartened to note the statement by the Prosecutor for the ICTY that completion of the investigations of the remaining un-indicted high-level targets will be achieved as planned by the end of this year. We are also pleased to know that the ICTR is on schedule. We understand that the cases at the ad hoc Tribunals are legally and factually very complex. We have also noted the efforts of the Tribunals to address such complexities.

Before concluding my brief remarks, I would like to address a question to the President of the ICTR: How would the arrest of 15 indictees and 16 suspects who are at large affect the completion strategy if some of those at large are not arrested soon or are arrested after 2010?

Mr. De Palacio España (Spain) (*spoke in Spanish*): I wish to join others in expressing my condolences at the tragic loss of human life of personnel of the United Nations Mission in Sierra Leone in the accident that occurred this morning.

I also wish to thank the Presidents and Prosecutors of both Tribunals for their statements and their thorough assessments. Allow me to make a few brief observations and to formulate a question.

The assessments of both Tribunals confirm that much remains to be done to complete the transfer of certain cases to national jurisdictions. Despite some encouraging data, it is disturbing that the Tribunals of the affected States are still not in a position to judge with full guarantees persons indicted by both Tribunals. In order to be able to act appropriately, it would be important to clearly determine which of these cases are due to limitations of a material nature and which are due to a lack of political will.

With regard to the International Criminal Tribunal for the Former Yugoslavia (ICTY), as pointed out in the report of the Prosecutor, Mrs. Del Ponte, Spain believes that the possibility of transferring to national jurisdictions not only cases related to mid- or low-ranking indictees, but also some high-ranking suspects, must not be dismissed, due to exceptional current circumstances. Rather, it should be considered very carefully and on the basis of a detailed case-by-case study.

Spain views with great concern the precarious financial state of both Tribunals. This is an ongoing and unacceptable situation. Successive changes in the Tribunal's work programmes, as a result of non-payment of contributions, would be a distressing message to the international community, and we make an appeal that that be avoided.

Equally concerning is the unsatisfactory cooperation of some States, which are most directly affected. Even though we welcome the improvement in the assistance given by the Croatian authorities, we must also mention the specific cases of Serbia and Montenegro. Regarding the latter country, we believe that the situation requires firm and decisive action by the Council. Even though everything seems to indicate that the recent elections have generated more promising hopes to put an end to a substantial lack of cooperation with the International Criminal Tribunal for the Former Yugoslavia, we believe that the Council must not lower its guard and must act appropriately.

I also wish to refer to the impact the expiration of the mandates next year of the permanent judges and the ad litem judges will have on the trial process. The Spanish Government continues to believe that any corrective measures must be based on respect for the prerogatives of the General Assembly. In particular

reference to the ad litem judges, we believe that the delicate situation of the Tribunals should lead us to not exclude from the outset the possibility of allowing their re-election. Alternatively, the Council could actively encourage the election of current ad litem judges who are put forward as candidates to fill the posts left vacant by outgoing permanent judges.

I wish in conclusion to ask the Presidents of both Tribunals whether, since their last appearance before the Council, there has been any significant progress in negotiations on agreements with various third States with respect to carrying out sentences imposed by the Tribunals. My delegation had had a few more questions, but I believe these were covered by previous speakers.

The President: I shall now make some brief comments in my capacity as the representative of the Philippines.

First, we join colleagues in extending condolences to the families and the Governments of those who perished in the unfortunate helicopter crash in Sierra Leone.

We would like also to thank the Presidents and the Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for their comprehensive and informative presentations this morning. We recognize the challenge facing the courts in completing their respective tasks and winding up their operations in accordance with the completion strategies, in accordance with resolution 1503 (2003). We appreciate the measures they have adopted to fulfil their completion strategies. We urge the courts to stick by the timeline established under resolution 1503 (2003) and to exert every effort to implement those strategies.

In March of this year, the Council reaffirmed the strategies by its resolution 1534 (2004). To prove that the Council was cognizant of the difficulties faced by the courts, we asked the courts to focus on "the most senior leaders suspected of being most responsible for crimes within [their] jurisdiction" (*resolution 1534 (2004), para. 5*) in order to free the courts from being saddled with volumes of cases that are best left to local courts. This morning, however, we took note of Judge Meron's comments on this element of focusing on the most senior leaders.

One important strategy for streamlining the handling of cases and for complying with paragraph 5 of resolution 1534 (2004) is to turn over as many cases as possible to local courts, not only for trials but also for appeals. That should clear considerable space in the dockets of the courts and enable them to fulfil their completion strategies. In that regard, all efforts must be made to implement rule 11 *bis* of the Rules of Procedure and Evidence, regarding referrals. While we understand the difficulties cited in the reports (S/2004/341 and S/2004/420), we nevertheless call on the Tribunals to pursue the strategy explicitly provided for in rule 11 *bis*.

We appreciate the report that both courts are currently operating at maximum capacity. My delegation would therefore support proposals to ease some of the factors that might have a bearing on the implementation of the completion strategies. A specific example is the lifting, in exceptional circumstances, of the general hiring freeze imposed on the Tribunals, which is described in the ICTY report as a "clear and present danger" (*S/2004/420, enclosure I, para. 53*) to the accomplishment of the court's goals. We will support such lifting after consultations with other members of the Security Council.

To encourage the retention of qualified staff who, understandably, would look for other opportunities outside the Tribunals when these are destined to end soon, we will also support a change in the classification of posts in the Tribunals, making personnel eligible to apply for other positions in the United Nations.

Finally, the Tribunals cannot function without the cooperation of Member States. In particular, the President and the Prosecutor of the ICTY have brought to the attention of the Council the fact that the court has received little or no cooperation from a Member State whose representative will be allowed to address the Council in a few minutes. We would like to hear the reply to that observation of the ICTY.

I now resume my functions as President of the Security Council.

The next speaker is the representative of Bosnia and Herzegovina. I invite him to take a seat at the Council table and to make his statement.

Mr. Kusljugić (Bosnia and Herzegovina): My delegation joins previous speakers in expressing

deepest condolences to the families and the Governments of the United Nations personnel killed today in a tragic accident in Sierra Leone.

It is my privilege to address the Council at such an important meeting. Allow me, before I go any further, to express the appreciation of my Government to the President of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the Honourable Judge Theodor Meron, and to the Prosecutor, Ms. Carla Del Ponte, for their comprehensive and detailed briefings. It is comforting to know that my Government and the two most important officials of the ICTY have almost identical views concerning the role, the purpose, the main goals, the obstacles and the closing-down strategy of the Tribunal. Furthermore, we have nothing but praise for the results the Tribunal has achieved so far in tackling the nearly insurmountable task of individualizing and processing countless unspeakable crimes; this will eventually enable the peoples of my country to lay down the heavy load of the past in order to catch up with the far fitter and lighter remainder of Europe.

The unprecedented international agreement known as the Dayton Peace Accord has been analysed and scrutinized ever since its conception. It has its friends and its foes; it has its up-sides and its flaws. But one simple fact has never been disputed: it is a powerful instrument of international law. It created obligations for the parties involved that have to be observed and obeyed. And it is fair to say that my Government never denied its obligations stemming from that agreement — just as it is fair to say that the international community never missed an opportunity to remind us of those obligations. Cooperation with the ICTY was always the first thing to be mentioned, whether as a condition for membership of the Partnership for Peace, as a requirement with regard to the Stabilization and Association Agreement with the European Union, or as a mighty stick in the hands of the High Representative — a stick that certain elected officials feared most of all.

This is neither the time nor the place to go on repeating our recent achievements and successes in implementing the Dayton Peace Accord, like a schoolboy trying to defend himself before his strict parents by bragging about his outstanding performance on the football field while having failed mathematics. But in all fairness, Bosnia and Herzegovina has done a lot when it comes to cooperation with the ICTY since the last report of the President and the Prosecutor of the Tribunal. The question here is: How much is enough? And can we make it on our own?

In the years 2003 and 2004, cooperation with the ICTY has been the number-one priority of the Government of Bosnia and Herzegovina. All the required legislation is in place; both entities have laws on cooperation with the ICTY; the criminal code has been amended with a provision regarding war crimes; the Special Chamber of the State Court will be operational soon, pending the availability of the funds donated by the international community — and here I join the plea of Judge Meron for speedy completion of the financing requirement; and the newly established State Information and Protection Agency will be fully equipped and trained for apprehension of the war crime indictees who are at large and for witness protection. In short, all the institutional requirements are in place.

According to last year's report of the State Prosecutor's office, 9,641 persons in Bosnia and Herzegovina were reported as potential suspects in war crimes: 7,120 in the Federation of Bosnia and Herzegovina and 2,521 in Republika Srpska. Four thousand five hundred ninety-six cases were sent to The Hague for further assessment. In total, 350 persons were accused of war crimes. Out of that number, 127 persons, all of them from the Federation of Bosnia and Herzegovina, were tried and sentenced for war crimes. Six of the highest-ranked former officials of the so-called Croatian Republic of Herzeg-Bosnia have voluntarily surrendered to the Tribunal, even though — for whatever reason — their indictments were never served to the Government of Bosnia and Herzegovina.

There are countless examples of judicial assistance extended by the local courts of the Federation of Bosnia and Herzegovina to the Tribunal. Thousands of pages of relevant documents, including 16 crates of war archives from the Ministry of the Interior of Republika Srpska, were surrendered to the Tribunal. Not two months ago, the leading elected officials of the State and both entities signed a pledge of full and unconditional cooperation with the ICTY, naming it again as their number-one priority. In addition, several attempts to arrest indictees — some in cooperation with the Stabilization Force and some independent — have been made recently. Yet all these efforts are deemed to be insufficient by the international community, creating an insurmountable obstacle to our joining the Partnership for Peace and

placing a colossal roadblock on our path towards membership in the European Union. Hence, we remain the hostages of Radovan Karadzic and the like, who see our difficulties as their strengths and our failures as their victories.

The story of the ICTY is not only the story of indictments and arrests, sentences and appeals, closing statements, plea bargains and admissions of guilt — however significant and important those are in setting the record straight. The real drama unfolds in the minds and souls of ordinary people. It would be unfair to them if I did not mention what is possibly the greatest joint achievement of the international community and local elected officials — one that marks a turning point in the post-war history of my country. The recent report of the Special Commission of the Government of Republika Srpska on the events in and around Srebrenica between 10 and 19 July 1995 — the Bosnian Srebrenica report — as well as the statement by Mr. Dragan Cavic, President of Republika Srpska, and the reactions of the general public, lead us to believe that a turnaround is beginning to happen in the collective conscience of the peoples of Bosnia and Herzegovina: from total denial to acceptance of responsibility, from a priori blaming others to accepting blame oneself, and from general and impersonal remorse all the way to redemption and, eventually, catharsis.

The President: The next speaker inscribed on my list is the representative of Rwanda. I invite him to take a seat at the Council table and to make his statement.

Mr. Ngoga (Rwanda): My delegation would like to join others in expressing our condolences to the Member States that lost nationals in the helicopter crash in Sierra Leone. We also express condolences to the United Nations.

My delegation would like to thank you, Mr. President, for having convened this meeting, during which we have heard reports from the Presidents and Prosecutors of the International Criminal Tribunal for Rwanda (ICTR) and of the International Criminal Tribunal for the Former Yugoslavia (ICTY).

We would also like to thank and congratulate the President of the ICTR, Judge Møse, and Prosecutor Hassan Jallow, for their statements and reports.

Rwanda continues to hope and expect that the Tribunal will bring to justice the perpetrators of the 1994 genocide, and we pledge our continued support to ensure that its work runs as smoothly as possible. We are particularly encouraged by the acknowledgement of President Møse and Prosecutor Jallow that Rwanda has been cooperating with the ICTR, and we reassure the Council that we shall continue to extend necessary cooperation to the ICTR throughout its mandate.

Since we met for the same purpose last year, we have witnessed a significant level of improvement in the work of the Tribunal as a result of measures taken by the Council. We once again congratulate the Council for the decision contained in resolution 1505 (2003).

The ICTR now has its own Prosecutor. As anticipated, that appointment has resulted in a better organized and more focused Office of the Prosecutor. There is both a qualitative and quantitative improvement in overall performance. There has also been a dramatic improvement and broadening of communication between my Government and the Office of the Prosecutor. Rwanda is committed to continuing to work closely with the Office of the Prosecutor and to provide the support and facilitation that we have been providing over the years.

We also commend the Chambers, and particularly Judge Møse, for recent initiatives aimed at improving the efficiency and effectiveness of their work. We also note and commend the contributions of the Registry, particularly Mr. Adama Dieng, for their invaluable contributions.

There are a few issues of great importance which we would like to bring to the attention of the Council, and we request that these issues be given attention by the Council at this time, when it is considering the completion of the work of the ICTR.

When the Office of the Prosecutor first presented its completion strategy, as many as 300 cases of suspects considered to be the most responsible were targeted for prosecution before the Tribunal completed its work. These most responsible suspects are the persons accused of the greatest level of responsibility for the genocide. That figure, however, fell soon afterwards — first to 250 and then to 150. Now it is less than 50.

While the number of most responsible suspects being pursued by the Tribunal may have decreased, the seriousness of the accusations against some of those suspects, who are no longer being pursued by the International Criminal Tribunal for Rwanda, requires the attention of the Security Council so as to ensure that they do not evade justice altogether. My delegation would like to request the Council to seriously consider this matter with a view to ensuring that there is no impunity, and that those suspects face justice. We therefore do not see the Tribunal's completion strategy as an exit strategy for the international community. We believe that the international community, and particularly the Council, has a responsibility to bring those suspects to justice, whether at the ICTR or elsewhere.

Rwanda will continue to work bilaterally with the countries where those suspects currently reside, with a view to having them transferred to Rwanda for prosecution.

My Government looks forward to the transfer of cases from the Tribunal to Rwanda, in compliance with resolution 1503 (2003). The people of Rwanda, who have felt alienated from the Tribunal, which is based hundreds of miles away, would be able to observe the trials first-hand. We believe that that would contribute significantly to the reconciliation process by giving a sense that justice is being done.

There has been concern expressed about the fact that the death penalty remains on Rwanda's statute books. I would like to take this opportunity to reiterate assurances that we have given to the ICTR that my Government is prepared to waive the death penalty with respect to cases transferred from the ICTR. We are in the process of exploring the necessary legal avenues to realize this general principle in a manner consistent with the wishes of the Rwandan people in their legislative strategy and in accordance with the specific demands of the International Tribunal.

My Government would like also to take this opportunity to state that it would welcome support for our judicial institutions as we prepare for the transfer of these cases. While we have made tremendous progress in rebuilding our judicial institutions — which, like everything else in Rwanda, were decimated by the genocide — we would appreciate support in the provision of additional practical training for our legal professionals.

The international community is expected to support Rwanda, as we are making great efforts to invest in the rule of law based on strong judicial institutions. We do not expect the international community, given our resource constraints, to set conditions against us, not even when the transfer of cases is being considered. The best legacy that international involvement in the process of justice can leave to Rwanda is to build strong judicial institutions for posterity.

Rwanda would like convicts to begin serving their sentences in the country. We believe that sentences should be served where the crimes were committed. It is difficult to imagine that sentences could be strictly enforced in countries thousands of miles from where the crimes took place, where there may be scant understanding of, or regard for, the seriousness of the crimes.

Let me give an example. In April, while the world marked the 10-year commemoration of the genocide in Rwanda, convicts serving their sentences in Mali were permitted to leave their detention facility and make telephone calls around the world, including one to the BBC Kinyarwanda service. They did an interview with the BBC in which they denied that the genocide ever took place, and they promised to return to Rwanda. Those statements were deliberately calculated to cause fear among the already traumatized genocide survivor community.

It has since come to our attention that it is routine practice for convicted persons serving sentences in Mali to be allowed out of the detention facility to make telephone calls. I do not think that I need to remind anyone here that these are persons convicted of the most serious crimes imaginable. Not only do we find this deeply offensive — especially coming, as it did, at a time when we were remembering the one million victims of the genocide — but it also calls into question the notion of convicts serving sentences outside Rwanda. We call upon the authorities of the ICTR to ensure that countries compromised by the events of 1994 are not given the opportunity to supervise enforcement of sentences. Should this happen, justice will not be seen as having been done. This will be the case even if the decision is taken out of goodwill.

My Government is aware of the fact that previous requests for sentences to be served in Rwanda have not

been taken seriously, on the grounds that our detention facilities did not meet international standards. In that context, my Government, despite many competing priorities for resources, recently constructed a new detention facility that meets required standards. A delegation from the ICTR visited the new facility a few weeks ago, and my Government was pleased with the preliminary assessment by that team, which made it clear that the facility met the required international standards.

We therefore look forward to convicts being sent to Rwanda to serve sentences in the country. We believe that this will contribute to the reconciliation process, as justice will not only have been done, but will also have been seen to be done.

We take note of the Prosecutor's remarks regarding the issue of special investigations, and we welcome his continued engagement with the authorities of Rwanda on this matter.

Many of the survivors of the 1994 genocide live in conditions of enormous hardship. We urge the Council to recognize the numerous difficulties faced by those survivors — particularly orphans, widows and victims of sexual violence. We also urge the Council to recognize that most survivors are poorer and more vulnerable today than they were 10 years ago as a result of the genocide. In particular, we would like to draw the attention of the Council to the plight of the thousands of women who contracted HIV as a result of being raped. While the people who either raped them or ordered them to be raped can receive the best of care under the auspices of the United Nations, through the International Tribunal, their victims are dying in large numbers. This has not been given the necessary attention in the context of witness protection, because these are the people who are expected to testify in the cases that are under way in Arusha. We therefore appeal to the Council and to other members of the international community to provide urgent assistance to those women and to other survivors of the genocide.

The President: The next speaker is the representative of Serbia and Montenegro, to whom I give the floor.

Mr. Kaludjerović (Serbia and Montenegro): At the outset, I should like to express my condolences to the United Nations and to the families of the victims of the tragic incident that took place this morning in Sierra Leone.

Allow me, Sir, to thank you for this opportunity to state my Government's position on the question under consideration. I would also like to thank the Presidents and the Prosecutors of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for their comprehensive briefings.

Serbia and Montenegro is committed to the administration of international justice through the establishment of individual criminal responsibility for all those who perpetrated crimes throughout the wartime conflicts in the territory of the former Yugoslavia. The truth that has been established in the proceedings of the International Tribunal is of pivotal importance for achieving a historical perspective on the tragic events that afflicted all of the peoples of the former Yugoslavia as well as for finally ending the legacy of the Milosevic regime.

Therefore, we consider our cooperation with The Hague Tribunal to be both our domestic and international obligation. Most of the persons indicted by the Tribunal committed, first and foremost, a crime against their own people. The Serbian people have never before been accused of genocide or ethnic cleansing. Moreover, we consider that the establishment of the truth in the proceedings of the International Criminal Tribunal as well as of national courts will contribute to the promotion of mutual trust and reconciliation in the territory of the former Yugoslavia.

Resolution 1503 (2003) endorsed a completion strategy for the Tribunal, and Serbia and Montenegro joins others in supporting the envisaged timetable for the completion of the ICTY's work.

Strengthening national legal systems, as emphasized in Security Council resolution 1503 (2003), will contribute significantly to the Tribunal's completion strategy. My Government appreciates the efforts of the United Nations Development Programme (UNDP) in organizing a visit to the Tribunal by judges from the Department for War Crimes at the Belgrade District Court, with the aim of transferring knowledge and experience from the practice of the Tribunal, as well as establishing channels of communication between the Special Court and the ICTY. We also welcome the stated commitment of the ICTY to support the holding of credible war crimes trials that

meet international norms of due process in all States of the former Yugoslavia.

My country has independently initiated a number of proceedings against perpetrators of war crimes. In proceedings before the national courts of Serbia and Montenegro as many as 17 persons have been convicted of war crimes and sentenced to prison terms ranging from eight years to the maximum penalty of 20 years. The Council for War Crimes of the District Court in Belgrade is currently investigating the cases of Hladnjaca, Petrovo Selo, Batajnica and Petrucica, with international assistance in exhuming the bodies and providing forensic analysis.

While reaffirming that we are fully aware of our obligations to the ICTY, we feel it necessary to repeat that any evaluation of cooperation must be based on facts, not on preconceived political perceptions. My Government has carefully studied the report before the Council today. We have given particular consideration to the assessments of the cooperation of Serbia and Montenegro with the ICTY and the criticism advanced by the Prosecutor's Office regarding insufficient cooperation with the Tribunal. In that connection, I would like to highlight some important points.

Cooperation with the Prosecutor's Office was of somewhat lower intensity due to circumstances stemming from the political situation of the country — the protracted process of setting up the new Serbian Government and appointing the Council of Ministers of Serbia and Montenegro, as well as the presidential elections in Serbia. At the time, all energies were focused on ensuring the country's political stability, preserving and building institutions and continuing the initiated reform processes.

Even in the face of such difficulties, at a time when the new National Council for Cooperation with the Tribunal had not yet been constituted, efforts were made to sustain a basic level of cooperation with the Tribunal. Regular, almost daily contacts at the working level were maintained between the Office of the Prosecutor and Belgrade. More than 50 requests by the Prosecutor's Office were responded to by providing the requested documents, granting waivers and by providing relevant information. An investigative team is expected to come to Belgrade in the next few days, and it will be granted access to the archives of the Ministry of Foreign Affairs.

Now that, in Sunday's elections, the citizens of Serbia have strongly reaffirmed their commitment to democracy, internal political conditions have been created for the Government of Serbia to honour its obligations to the ICTY as soon as possible. I assure the Council that cooperation with the Tribunal, primarily with the Prosecutor's Office, will be one of our foreign policy priorities.

My Government is aware of the fact that cooperation with the ICTY is its obligation and that still more needs to be done in that respect. Cooperation with the Tribunal is a process my Government will continue, maintaining efforts to improve that cooperation as part of its fulfilment of Serbia and Montenegro's goal of taking further steps towards Euro-Atlantic integration.

Given that over the past few years we have summoned the will to hand over or assist the transfer to the Tribunal of the highest ranking former political and military leadership, including Slobodan Milosevic, Milan Milutinovic, Dragoljub Ojdanic and others, unprecedented in the recent history of any State, the Council may rest assured that in the near future we shall continue to cooperate with the Tribunal along the same lines.

The President: The next speaker inscribed on my list is the representative of Croatia, whom I invite to take a seat at the Council table and to make his statement.

Mr. Drobnjak (Croatia): Let me begin by expressing Croatia's deepest condolences at the tragic loss of life in the line of duty in Sierra Leone.

Croatia highly commends the reports of the President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and of the Prosecutor (S/2004/420). The two documents provide a solid, well researched base for further work towards the successful implementation of the completion strategy. Their reports also accurately take note of the major effort Croatia has made for full and uncontrained cooperation with the ICTY. I take this opportunity to thank the ICTY President and the Prosecutor for their words of praise for Croatia's cooperation with the Tribunal.

Today, I am happy to state that Croatia has fulfilled all its obligations to the Tribunal, including its financial obligations, save one. Regarding the case of

General Ante Gotovina, whose indicted person still remains at large, the Croatian Government, as stated in paragraph 42 of the Prosecutor's report, is currently doing everything it can to locate and arrest him. Croatia is especially pleased that the Government's efforts in this particular regard did not go unnoticed by the Tribunal.

Fulfilling the completion strategy for meeting the 2008, 2009 and 2010 deadlines, as outlined in Security Council resolutions 1503 (2003) and 1534 (2004), must remain the Security Council's priority. Croatia stands ready to contribute to that goal as much as possible. The Tribunal's work and its significance for long-lasting post-conflict stability in South-East Europe should be judged not only by its judicial work but also against the background of its timely closure. The past must not be forgotten, but it should not overshadow the future. In 2010, when the Tribunal is scheduled to complete all its work, the issues of European integration, regional cooperation, economic prosperity and foreign investments ought to entirely dominate headlines throughout the region.

The transferral of cases to competent national jurisdictions for trial is one of the pillars of the completion strategy. Croatia is ready to take a number of cases from the Tribunal and is preparing Croatian judges and prosecutors for that serious task. I would like to inform the Council that in May and June of this year, ICTY representatives, together with Croatian legal experts, took part in training programmes for the Croatian judiciary. That important exercise was organized by the Croatian Ministry of Justice, in cooperation with the ICTY Registry. Another similar programme will run until October of this year and will involve approximately 60 Croatian legal professionals. Recently, a conference including the ICTY Victims and Witnesses Section and health and welfare professionals from Croatia was organized with a view to discussing the physical, emotional and psychological needs of witnesses. The purpose of the conference was to discuss how the establishment of health and welfare networks throughout Croatia could assist in providing preparation and follow-up services for witnesses who testify at the Tribunal. Croatia has also adopted the Witness Protection Act.

The Croatian Government remains grateful to the Tribunal and its experts for their valuable assistance, which will enhance the ability of Croatia's judiciary to prosecute war-crime cases in a professional and non-biased manner. Croatia feels prepared to take over part of the Tribunal's load as soon as this autumn and will continue its dialogue with the ICTY on this subject and cooperate in the field of training and technical assistance. Let me add that Croatia was glad to hear this morning that the Prosecutor intends to request the so-called Medak pocket case be transferred to Croatia. We appreciate that very much.

The Croatian judiciary has independently initiated a number of proceedings against the perpetrators of war crimes in Croatia. Those trials were and are still being closely observed by the ICTY, in accordance with Croatian legislation, which entitles the Tribunal's representatives to follow the proceedings and grants them access to court files. In addition, evidentiary material obtained by the ICTY can be used directly in domestic trials. Recent final verdicts in some of the most serious cases serve as confirmation of the professional standards achieved by the Croatian judiciary in this difficult and politically highly sensitive domain.

I would like to recall Croatia's position — outlined last October during the Security Council debate on this item — on two important issues that appear to have been somehow overlooked: compensation to those acquitted by the Tribunal and the enforcement of sentences as close as possible to prisoners' places of residence. Croatia believes that the Tribunal's jurisdiction should be amended by establishing an appropriate procedure that would enable it to award compensation to wrongly convicted, prosecuted or detained persons. As for enforcing sentences, I would like to recall that the basic international instruments in this area favour the incarceration of prisoners reasonably near their usual places of residence. The existing instruction, dating from 1993, envisages the enforcement of ICTY sentences outside the territory of the former Yugoslavia. Nevertheless, we find it important to reiterate the request that the Secretary-General review his predecessor's instructions regarding those arrangements.

With regard to the provisional release of accused who are awaiting the commencement of their trials, Croatia advocates the implementation of that measure whenever feasible. Croatia acknowledges with appreciation that the Tribunal has already been forthcoming on this issue in several cases. As affirmed in General Ademi's case, the Croatian Government will

ensure that other provisionally released citizens of Croatia will reappear for trial at The Hague and that they will not pose a threat to victims or witnesses. In any case, Croatia will meet its obligations in relation to the provisional release of accused.

The Tribunal cannot fulfil its historical role only by sentencing those who have been found guilty. For Croatia, the accurate historical and political record established through the Tribunal's jurisprudence is no less important than the legal record or the punishment of perpetrators. A person's guilt or innocence can be established only before the Court. Bearing that in mind, Croatia has transferred to The Hague all indicted persons within its reach. Those who are guilty must be punished, regardless of their ethnic background. Nevertheless, Croatia must question some of the qualifications in several indictments, which are not fully in line with the letter of our recent history or entirely in accordance with the General Assembly resolution on Croatia's occupied territories.

Justice will be fully served only if those who have suffered most find comfort and consolation in the recognition that everything they have experienced has not been in vain. It has been appropriately stated many times that the Tribunal performs the role of justice and of memory. Future generations, as they read the Tribunal's records on the events that have taken place on the territory of the Republic of Croatia, must be able to distinguish clearly between the aggressor and the victim; they must be able to comprehend what happened in the critical days of the homeland war, which remains one of the finest hours in my country's history.

In conclusion, let me state very clearly that, as a candidate country for membership in the European Union, Croatia is fully aware of the importance of cooperation with the ICTY and will continue to fulfil all related obligations to the best of its ability.

The President: I shall now give the floor to Judge Meron to respond to comments and questions raised.

Mr. Meron: I would like at the outset to thank the members of the Council for their support, their comments and their questions. I note in particular comments made with regard to the overarching principle of justice and accountability and to the denial of impunity, and in the context of the target date for the completion strategy.

I am also grateful to several members of the Council for their comments regarding the negative and dangerous effects of the current financial freeze. I hope that the membership at large will note the appeals voiced today by members of the Council to the membership at large to pay their arrears as soon as possible. What is involved here is not just a question of a technical payment; it is nothing less than the commitment of our United Nations community to principles of justice.

I would now like to turn to specific questions asked of me and of my colleagues. I will start with the representative of France. The question was, how and when would cases be transferred to national jurisdictions, and under what conditions? As I indicated very briefly in my report this morning, the situation is somewhat different with regard to the several States formed on the territory of the former Yugoslavia. As regards Bosnia and Herzegovina, the International Criminal Tribunal for the Former Yugoslavia (ICTY) has worked very hard with the Office of the High Representative and with governmental authorities in Bosnia and Herzegovina to help establish a special war crimes chamber in Sarajevo at the level of the State court that already exists there. As I pointed out briefly this morning, courtroom facilities should be operational in Sarajevo in January 2005. I voiced my confidence this morning — and I would like to repeat now — that that special chamber in Sarajevo would comply with the entire panoply of due process and human rights. I would like to hope that detention facilities in Sarajevo meeting international standards will be available in January, but if they are not available then, they will be available just a few short months later, so that cases can start moving to Sarajevo from the ICTY very early in 2005.

As regards Croatia, as I have pointed out, reports presented recently by the Organization for Security and Cooperation in Europe (OSCE) and by the Council of Europe still indicate some continuing problems with regard to due process and fairness, particularly in some instances of persistent bias concerning the ethnic identity of accused and of victims. We in the Tribunal are committed to working with the Government of Croatia to enhance the capability of Croatia's judiciary in order to be able to conduct in Croatia, before long, fair war-crimes trials that take full account of international human rights and due process. There is

room for optimism concerning the potential transfer of a limited number of cases to courts in Croatia — courts whose judges and prosecutors have received and continue to receive special training. We in the ICTY are very much involved in that training.

As regards Serbia and Montenegro, the prospects for the transfer of cases have, of course, been inevitably diminished by the past lack of cooperation between Serbia and Montenegro and the Tribunal. In that context, I would also like to mention the fact that a mission report prepared by the OSCE, based on the monitoring of trials throughout 2003, found that the national judiciary lacked full capacity to conduct war-crimes trials in accordance with universally accepted standards. We in the Tribunal remain committed to assisting Serbia and Montenegro in bringing the judicial bodies in that country up to international standards in terms of their capability to conduct fair war-crimes trials.

The representative of France also asked me about conditions under which we operate, and I would like now to briefly sum them up. The first condition, especially under the amended rule 11 bis, is fairness of the trial and the existence of due process in the receiving country. Then, of course, there is the exclusion of the death penalty. We consider in this context, under rule 11 bis, the gravity of crimes and the level of responsibility. Finally, we should take into account Security Council directives under recent Security Council resolutions which establish the benchmark of seniority. Under those directives, only lower-level and intermediate-level accused can be transferred to national jurisdictions.

In addition, may I remind the representative of France of the innovation introduced in the recent amendments of rule 11 bis, which enable us for the first time to transfer cases to jurisdictions outside of the former Yugoslavia when the country concerned has the necessary jurisdiction and when it is ready and willing to accept such cases. This provides a safety valve which can, in due course, be very important, because should there still be some kind of a deficit in due process in the judiciaries of the area itself, we would be able — should countries outside of the area be ready and willing — to transfer cases to those additional jurisdictions and thus help the completion strategy. I salute my colleagues in the International Criminal Tribunal for Rwanda, who showed us the way to model our own rule on the rule which they adopted in April.

Finally, on this point I would like to draw the attention of the Council to the fact that any speculation regarding the transfer of cases would be dangerous because, in every single case, the decision of whether or not to transfer a case would be made by a panel of judges — by a trial court — which would take into account all the facts, including the underlying rules which I have summarized for the representative of France.

I would now like to turn to a question asked by the representative of the United Kingdom with regard to the extension of the mandate of judges whose trials have lasted, at the very least — if I understood him correctly — six months by the time their mandate has expired. I believe that some action along the lines suggested by the United Kingdom will be necessary. Whether the cut-off length of the continuing trial should be six months, as the representative of the United Kingdom suggested, or not is a question on which we would want to reflect a little bit more. There is no question, however, that there is a very strong interest of the international community that judges who have not been re-elected and who are trying a case should be allowed to sit on that case until it is completed.

Now, some of the difficulties and dangers of disruption will be attenuated, but not eliminated by the proposal which we, the judges, have made to the Secretary-General and which he has accepted, to advance the elections to November 2004. This would enable us to have a more efficient assignment of judges, based on our knowledge at that time of who will stay on after November 2005 and who will not. This is also a good opportunity to remind the Council again that there will definitely be a need to extend the mandates of individual ad litem judges who will be involved in continuing cases at the time when their mandates, under the existing statute, come to an end in June 2005. It will also be necessary, if I may so suggest, to elect a new list of ad litem judges, just as we will be electing a new list of permanent judges. I have made a commitment to discuss this matter with the Secretary-General and with the Security Council in the fall.

The representative of Russia asked me about certain questions which will arise in connection with

the winding up of the Tribunal. More specifically, what do we propose with regard to a mechanism to substitute for existing mechanisms to deal with requests of convicted persons for pardons or commutations of sentence? An additional question pertains, of course, to a review mechanism which now exists under article 26 of the statute. Once the Tribunal has completed its work, it will be necessary to find some kind of a mechanism to deal with those questions. Presently, with regard to pardons and sentences, for example, the procedure lays down that this is up to the President of the Tribunal, after consultation with the bureau and the judges of the Chamber that originally sentenced the convicted person.

I think it is too early to create a mechanism to deal with these questions after the completion of the work of the Tribunal. In my own view, some mechanism will be necessary, but such a mechanism should be a minimalistic one that would not be costly. It must not cost too much money to the United Nations. For instance, one could envisage a panel of judges on whom one can draw when questions come up and who thus would not be actively or remuneratively employed. In other words, they would not be paid for just being on that panel's list, in order to economize on expenses to the United Nations.

The representative of Germany asked a question about the victory of Mr. Boris Tadic in Serbia. The members of the Council will, of course, understand that I would not be comfortable commenting on the elections which took place recently. All that I wish to say about that — and I take into account the comments made just a few minutes ago by the representative of Serbia and Montenegro on cooperation with the Tribunal being a matter of priority for the new Government in Belgrade — is that there is nothing that I could wish for more than full cooperation between the Government of Serbia and Montenegro and the Tribunal. This cooperation should be in deeds and in acts, and not just in words, and I offer to assist the new Government in any way it considers appropriate in order to serve that important goal.

The representative of Germany also asked about what third States can do in order to encourage cooperation between the Government in Belgrade and the Tribunal. All I would like to say on that subject is this: the more the international community and its members impress on the new Government the benefits and the importance of cooperation with the Tribunal, the better. I think the education of the public is extremely important; the training of the judiciary is also very important.

The representative of Spain asked me about progress in negotiating new agreements on the question of where our convicted persons could serve their sentences — the so-called enforcement of sentences agreement. I would like to say that the last agreement which we have concluded — I believe it was the tenth — was an agreement concluded with the United Kingdom, for which we are very grateful to that country. The Registrar of our Tribunal is continuously approaching various Governments, asking them to start negotiations on the conclusion of additional agreements. I would like to use this forum to appeal to Governments to conclude such agreements with the Tribunal. As the number of convicted persons increases, our capacity to find places where they can serve their sentences is definitely not adequate.

I believe that I have answered the questions that have been directed to me and I thank the members of the Council for their attention.

The President: I thank Judge Meron for his comments, responses and clarifications.

I now give the floor to Judge Møse to respond to comments and questions raised.

Mr. Møse: Let me also wholeheartedly thank all the members of the Security Council for the words of support and encouragement they addressed to the two Tribunals, and in particular to the International Criminal Tribunal for Rwanda (ICTR), which I am representing here. I noted in particular with great appreciation the expression of the need for all States to cooperate, including when it comes to the arrest of suspects and indictees who are at large, and to the need for all States to pay their financial contributions — a problem which was raised by all four of us in our introductory statements.

I turn now to some of the issues raised. I think I will start with the intervention of the representative of the United Kingdom, on a matter that was also mentioned by the representative of Germany: the issue of transfers. Of course, transfer under rule 11 bis is primarily a judicial decision; it is for the Chamber to decide based on a request by the Prosecutor in conformity with rule 11 bis. We are not yet there, but

we will soon be there. The question at present therefore relates not to the concrete evaluation of a case, but rather to the general framework. When it comes to that issue, there are two main problems. The first is the question of the death penalty in Rwanda. Here, I noted the statement of the representative of Rwanda concerning the reiteration of assurances on waiving the death penalty with respect to the cases transferred from the ICTR. To what extent guarantees are needed here and whether this is sufficient are currently under consideration.

The other issue will be, once the legislative framework has been clarified, to look into the issue of the institution to deal with such cases and the proceedings to be followed. Again, these are issues currently under review and it is a bit premature to go into them now, I think. Let me simply declare, however, that I am in agreement with those members of the Security Council that have stressed the need for confidence-building and support in connection with the transfer of cases. I note the request for such support by the Rwandan representative.

The question of pardon or commutation, raised by the Russian delegation, has already been fully and satisfactorily responded to by my colleague, President Meron. There is no need for me to go into that. I agree with his assessment.

Turning now to the issue raised by the Pakistani delegation, it is clear that we will never be able to deal with all 29 persons at large. We now have the 48 under control, so to speak. These cases are in progress, and we have another 10 waiting in our detention centre. That would bring us to 58. And then there is the issue of the maximum number, which in our completion strategy has been indicated at approximately 65 to 70, at least at the present stage. We will see how this develops as time passes, but, again, it is clear that we cannot deal with them all and, in order to avoid impunity — as vitally stressed by the Rwandan representative — it is important to find the right division of work between what we do at the international level and at the national level. The ICTR will concentrate on finding the accused who are most responsible, as explained by the Prosecutor, and then we will all have to assist the national jurisdiction in order to assist such jurisdictions in dealing with the other ones.

There was an issue raised by the Spanish delegation concerning new agreements. Since we last met on 9 October, France has ratified one enforcement agreement and Sweden has signed one that entered into force immediately.

Finally, I thank the Rwandan delegation for its comments and I have taken note of what was said in that statement. Again, I thank all the members of the Security Council for their words of support. We will bring them back with us to Arusha and they will be a great encouragement in our work in the days and months to come until the next time we meet here to report on the progress made.

The President: I thank Judge Møse for the comments and clarifications he has provided.

I shall now give the floor to Ms. Del Ponte, the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, to respond to comments and questions raised.

Ms. Del Ponte (*spoke in French*): I, too, wish to thank all members of the Security Council for their comments and assessments, and in particular for the message I have received from some that Karadzic, Mladic and Gotovina must be tried in The Hague. Of course, it does me, my colleagues and the entire Tribunal good to hear such a message.

President Meron answered all the questions and I have nothing to add, other than two important points. I note that Serbia and Montenegro intends to resume cooperation, and I do mean "resume" because, as I have reiterated since December, we have had none at all. The intention is a good one and I await immediate results. The situation is urgent. Belgrade can begin its cooperation forthwith. Of course, I need an interlocutor, since Belgrade has been unknown to me until now.

Secondly, with respect to the transfer of cases, when President Meron refers to cases under rule 11 bis, these are cases in which we already have indictments. I have about 100 cases in which I still have no indictment or in which I was prepared to issue one but did not do so after the Security Council adopted its resolution. These are so-called mid-level cases, but nevertheless involve defendants or suspects who are guilty of very serious crimes. We are considering transferring those cases to national judicial authorities. We are currently working with the Belgrade Prosecutor

on the transfer of a very important case on which I have already prepared an indictment, which I have not submitted, and the Belgrade Prosecutor has agreed to take on that case.

This will be a test. It will be a test with Belgrade, and it will be a test with Croatia. We eagerly await the beginning of work by the Special Chamber in Bosnia and Herzegovina: beyond the 11-bis cases — on which indictments exist — there are many other files on suspects, containing sufficient evidence to bring them to trial.

This is all to say that we remain firmly against impunity for the perpetrators of these crimes.

The President: I thank the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, Ms. Carla Del Ponte, for the clarifications she has provided.

I call next on Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for Rwanda, to respond to comments and questions that have been raised.

Mr. Jallow: I thank you, Mr. President, and the other members of the Council for your support. A few issues have been raised which fall within my area; these focus mainly on the question of the transfer of cases. I base my response essentially on the explanations made by Judge Møse and by the President of the International Criminal Tribunal for the Former Yugoslavia, who explained the process of and conditions for transfer.

Essentially, we will not transfer any person for trial by a national jurisdiction unless both the Prosecutor and the Trial Chamber authorizing the transfer are satisfied that the person will stand fair trial in the jurisdiction to which he is being taken, and also that he will not suffer a greater penalty than he would otherwise have been exposed to at the Tribunal itself. We are working on the conditions: as I indicated, we are now drafting an agreement which spells out all the conditions which, in our view, make for a fair trial, based on the Statute's provisions and on other international instruments in force.

In that respect, I would like to confirm that the Rwandan Government has indicated to us that they would be ready to take the necessary measures to waive the death penalty with regard to all transferees.

An important element of transfers is the fact that the Tribunal always retains primacy over these cases, so when we transfer the cases we have to put in place a monitoring mechanism to ensure that the standards of a fair trial are being observed. We retain the right to take the cases back to the Tribunal if we are not satisfied that the standards are being observed. It is important to note that element.

In the case of the International Criminal Tribunal for Rwanda (ICTR), of course, the primary destination for the transfers would be Rwanda, because that is where the offences occurred. This would be subject to their fulfilling all the conditions to ensure a fair trial, the issue of penalty having been resolved. There are also other countries where some fugitives are resident. If such countries are willing and able to take up the prosecutions, we would encourage them to do so. There is a third category of States, in Africa particularly, where there are no fugitives resident and where offences were not committed, but which nonetheless have indicated, in principle, their desire to take on some transfer cases. That is a very encouraging sign that they are living up to their international responsibility to assist with the prosecution of these cases.

In terms of the timeline, at the Office of the Prosecutor we are starting work on these transfers as from now. Our expectation is that perhaps by the middle of next year we will have finished work on all the files that we want to transfer to national jurisdictions.

The representative of Pakistan has asked what happens if we cannot transfer these cases? I have said that I would come back to the Security Council and advise the Council of the situation. I cannot tell at present what options we would need to look when we come to that stage. I think, essentially, that we need to be guided by the principle that we should not let impunity prevail. Already, the completion strategy has resulted in a situation where we are letting off quite a number of people who would otherwise have faced prosecution. The difficulty of completing all those cases has made us focus on a specific category. If we find that we cannot even transfer those to national jurisdictions for prosecution, then the Security Council and the broader United Nations, together with the Tribunals, will have to look at another option that will ensure that impunity does not prevail.

Some of the countries in question would require material support. That would not be the responsibility of the Tribunals, because we would not be in a position to provide it. We could provide help in terms of capacity-building and training: taking in officers from national jurisdictions on attachment to us, training them and giving them the necessary experience. Individual countries wishing to take on cases would have to draw up lists of their requirements and approach the United Nations or approach other countries on a bilateral basis, with the support of the Tribunal, and try to obtain such assistance.

The issue of the Democratic Republic of the Congo was raised. Many of our indictees, as I said, are within that jurisdiction. A combination of factors has made it difficult to reach them so far, the primary one, I believe, being the problem of accessibility to the particular area of the country in which they are located. Nonetheless, one must say that communications with the Government of the Democratic Republic of the Congo have been a little bit difficult. We have had to resort to intermediaries. Even in the case I mentioned, of Yusuf Munyakazi, transfer was made possible largely by the intervention of an intermediary. So perhaps a more prompt and direct response from the Government of the Democratic Republic of the Congo would facilitate matters for us in this regard.

Finally, I have noted the issue of the prison incident in Mali, which was raised by the representative of Rwanda. The situation he described there is, of course, a deviation from the normal regime for persons who have been convicted and are now serving their sentences. But what happened there did not occur with the knowledge, the authority or the approval of the ICTR. Inquiries are now under way to determine fully all the circumstances that led to that situation.

With those remarks, Mr. President, I would like again to thank you and the other members of the Council for your support and your encouragement.

The President: I thank Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for Rwanda, for the clarifications he has provided.

I would like to take this opportunity on behalf of the members of the Security Council to thank Judge Meron, Judge Møse, ICTY Prosecutor Del Ponte and ICTR Prosecutor Jallow for taking the time to brief the Security Council.

There are no further speakers on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

The meeting rose at 5 p.m.